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Supreme Court of the United States

OCTOBER TERM, 1964

No. 515

HEART OF ATLANTA MOTEL, INC.,

Appellant,

against

THE UNITED STATES OF AMERICA ET AL.,

Respondents.

BRIEF OF THE ATTORNEY GENERAL OF THE STATE OF NEW YORK AS *AMICUS CURIAE* IN SUPPORT OF AFFIRMANCE

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York

SAMUEL A. HIRSHOWITZ
First Assistant Attorney General

SHIRLEY ADELSON SIEGEL
Assistant Attorney General
in Charge of Civil Rights Bureau
Of Counsel

249 Press of Fremont Payne, Inc., 80 Washington St., N. Y.—BOwling Green 9-8153

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Interest of the *Amicus*

The State of New York has a vital interest in the outcome of this litigation over the constitutionality of the Civil Rights Act of 1964, notably Title II pertaining to public accommodations.

New York has an immediate and specific interest as *parens patriae* with respect to the many Negroes who are New York citizens. They are protected under the laws of this State against discrimination in places of public accommodation, but their ability to move freely in certain other parts of the country for pleasure or business has been impeded by discrimination and segregation because of their race and color. In 1960, out of an aggregate New York State population of 16,782,304 persons, 8.4% or 1,417,511 were Negro. U. S. Bureau of the Census, *United States*

Census of Population: 1960. General Population Characteristics, New York. Final Report PC (1)-34B, Table 15.*

Beyond its specific interest as *parens patriae* as to Negro New Yorkers, New York State has a stake in the future of America. The widespread protest against segregation and discrimination in public places has been heard throughout the world. The demoralization of our national will that may result from racial unrest is a threat to our security as a free nation and to our prosperity. As well expressed in the New York law, "practices of discrimination • • • because of race, creed, color or national origin • • • menace[s] the institutions and foundation of a free democratic state." New York Executive Law, sec. 290. If the national government should be impotent to cope with this crisis, the consequences will be serious for all of us.

Question Presented

May Congress lawfully regulate under the commerce clause practices of racial discrimination by a motel which provides lodging to transient guests from out-of-state?

Statute Involved

Civil Rights Act of 1964, Public Law 88-352, 78 Stat. 243.

"TITLE II—INJUNCTIVE RELIEF AGAINST DISCRIMINATION IN PLACES OF PUBLIC ACCOMMODATION

"Sec. 201(a) All persons shall be entitled to the full and equal enjoyment of the goods, services, facili-

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* While the following brief is directed to the problem of discrimination against Negroes, which is at issue in the present case, the statute properly extends protection to all minorities, whether racial, religious or national.

The census table referred to in the text shows that the "nonwhite" population of New York State in 1960 was 1,495,233, or 8.9% of the total population.

ties, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the ground of race, color, religion, or national origin.

"(b) Each of the following establishments which serves the public is a place of public accommodation within the meaning of this title if its operations affect commerce, or if discrimination or segregation by it is supported by State action:

"(1) any inn, hotel, motel, or other establishment which provides lodging to transient guests, other than an establishment located within a building which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor of such establishment as his residence;

• • •

"(c) The operations of an establishment affect commerce within the meaning of this title if (1) it is one of the establishments described in paragraph (1) of subsection (b); • • • For purposes of this section, 'commerce' means travel, trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia and any State, or between any foreign country or any territory or possession and any State or the District of Columbia, or between points in the same State but through any other State or the District of Columbia or a foreign country."

POINT I

Congress has found that practices of racial discrimination in furnishing lodgings to transient guests actually burden interstate commerce.

In adopting Title II, Congress acted with full knowledge of conditions of discrimination and segregation in places of public accommodation and of public unrest over these

conditions. Presidential messages, hearings and debates over the period of a year established the existence of a widespread social evil.

In the ample legislative history which documents the reasons that led Congress to act, reference need be made only, for brevity's sake, to certain testimony and information received by the Senate Commerce Subcommittee as described to the House of Representatives, H. R. Rep. No. 914, Pt. 2, 88th Cong., 1st Sess., pp. 7-11. Thus, an official of the National Association for the Advancement of Colored People gave poignant testimony to the human problem of Negro families traveling by car, weary as they drive on, past vacancy signs at motels, until they reach a town or city where they have friends (*id.* at pp. 7-8). The Subcommittee was furnished a table by officials of the United States Commerce Department revealing the distances between certain cities that a Negro must travel to find lodging of reasonable quality (*id.* at p. 9, Table I). Statistical evidence was also furnished showing the imbalance between Negroes and whites (within the same income class) in expenditures for automobile operations, an imbalance particularly marked in areas where places of public accommodation are widely segregated (*id.* at p. 11, Table II). The point need not be labored that travel over large distances is a hallmark of the American way of life.*

Also, testimony was presented before the House Judicary Subcommittee by an official of the International Brotherhood of Teamsters that Negro truckdrivers are not sent on overnight trips in certain regions because of a lack

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* In this connection, it may be noted that the Outdoor Recreation Resources Review Commission in its Report to the President and the Congress, *Outdoor Recreation for America* (January 1962), found that "driving for pleasure" was the most popular outdoor activity for Americans as a whole (*id.* at p. 3); and in surveys made for the Commission by the University of Michigan it was ascertained that 27 per cent of all vacation trips taken by Americans in 1959-60 involved more than 1000 miles of travel one way (Appendix F, Table 14, *id.* at p. 217).

of rest accommodations (*id.* at p. 10). The implications are clear: opportunities of dark-skinned Americans to obtain certain kinds of employment or to engage in certain businesses have been limited by their predictable difficulty of access to places of public accommodation.

The Stipulation of Facts in the case at bar dramatically illustrates the scope of denial of motel accommodations to interstate travelers who are Negro (Record, p. 17). Through various national advertising media, including magazines having national circulation, the appellant solicits patronage for its motel from outside the State of Georgia (*ibid.*). Appellant maintains over fifty billboards and highway signs advertising the motel on highways in Georgia (*ibid.*). It was stipulated that approximately 75% of the total number of guests who register at appellant's motel, which has 216 rooms for lease or hire to transients, are *from outside the State of Georgia* (*ibid.*) (italics supplied); and the Complaint alleges (para. 6, Record, p. 7) that appellant's motel has never rented sleeping accommodations to Negroes.

In submitting the bill which became the Civil Rights Act of 1964, the House Committee on the Judiciary made this general statement (H. R. Rep. 914, 88th Cong., 1st Sess., p. 18):

> "• • • national legislation is required to meet a national need which becomes ever more obvious. That need is evidenced, on the one hand, by a growing impatience by the victims of discrimination with its continuance and, on the other hand, by a growing recognition on the part of all of our people of the incompatibility of such discrimination with our ideals and the principles to which this country is dedicated • • •
>
> [H.R. 7152] would make it possible to remove the daily affront and humiliation involved in discriminatory denials of access to facilities ostensibly open to the general public."

Thus, in Title II of the Civil Rights Act of 1964, Congress found that practices of inns, hotels, motels and other establishments lodging transient guests which deny full and equal enjoyment of their facilities to all persons, withholding such enjoyment from some through discrimination or segregation on the ground of race, color, religion or national origin, constitute a burden upon "travel, trade, traffic, commerce, transportation" and "communication" between the states.

Any declaration by Congress concerning public conditions that by necessity and duty it must know is entitled at least to great respect. *Block* v. *Hirsh*, 256 U. S. 135, 154 (1921). Particular weight is given by this Court to legislative findings which are supported by extensive investigations by Committees of Congress. *Communist Party* v. *Subversive Activities Control Board*, 367 U. S. 1, 94 (1961).

POINT II

Congress has power under the commerce clause to outlaw racial discrimination by inns, hotels, motels and other establishments which provide lodging to transients.

Article I, § 8, clause 3 of the Constitution confers upon Congress the power "to regulate commerce among the several states * * *" and under clause 18, "to make all laws necessary and proper for carrying into execution the foregoing powers."

A. As to Racial Discrimination Against Travelers

Relying upon the commerce clause, this Court has consistently protected interstate travelers from denial of equal treatment because of their race or color. Protecting the traveler's right to lodging irrespective of his race, creed, color or national origin is not different in principle.

Interstate Commerce Act § 3(1), 49 U.S.C. § 3(1), prohibiting discrimination against passengers, has been applied to ensure equal treatment irrespective of race or color under a variety of situations, irrespective of local law or custom. E.g., *Mitchell* v. *United States*, 313 U. S. 80 (1941) (railroad Pullman); *Henderson* v. *United States*, 339 U. S. 816 (1950) (railroad dining car); *Georgia et al.* v. *United States et al.*, 371 U. S. 9 (1962), *affirming* 201 F. Supp. 813 (N. D. Ga. 1961) (involving Interstate Commerce Act § 216(d), 49 U.S.C. § 316(d), the non-discrimination provision affecting motor carriers).

In the last cited case, the State of Georgia objected to an order by the Interstate Commerce Commission that no motor carrier subject to its jurisdiction shall operate a vehicle in interstate commerce on which the seating of passengers is based on their race or operate terminal facilities on a similar basis. Georgia contended that the effect of the order was to regulate local commerce, since the same vehicles and terminal facilities were used for both intrastate and interstate passengers and it was not economically feasible to make a separation. It was held that the intrastate effect was incidental, and the order was upheld.

The national government's commerce power has also been effective in giving the traveler a legal right to use restaurant facilities in a bus terminal used by interstate buses, notwithstanding local law and custom upholding racial segregation. *Boynton* v. *Virginia*, 364 U. S. 454 (1960).

There is no authority to the contrary. Even in *United States* v. *Yellow Cab Co.*, 332 U. S. 218 (1947), which has been cited as a contrary holding, this Court warned that local taxicab service to and from a railroad station where interstate journeys begin and end might have sufficient effect upon interstate commerce to justify imposition of federal laws resting on the commerce power (*id.*, pp. 232-233). In the *Yellow Cab* case, the taxis merely conveyed

interstate passengers between their homes and the railroad station in the normal course of operating an independent local taxi service that was not an integral part of interstate transportation, and this Court held that a restraint on such a general local service, without more, is not proscribed by the Sherman Act. Here we have an entirely different situation, since Congress has found specifically that the lodging of transients on a discriminatory basis affects interstate commerce.

The *Civil Rights Cases*, 109 U. S. 3 (1883), are not in point since a different section of the Constitution was in issue. It was not contended that the Civil Rights Act of 1875, which contained a public accommodations provision similar to section 201(a) of the 1964 Act, rested upon the commerce clause.

B. As to Other Regulation Under the Commerce Clause

Apart from the law on interstate passengers as such, Congress has ample power under the commerce clause to outlaw racial discrimination by inns, hotels, motels and other establishments which provide lodging to transients from out of state. This Court has repeatedly upheld the power of Congress to enact legislation which is designed to eliminate causes of obstruction to the free flow of interstate commerce whether or not the regulated activity is itself interstate in character or, in any individual case, has a substantial effect on commerce.

Notable examples of Congressional exercise of the commerce power over activities not in themselves interstate in character are provided in the field of labor law. Specifically, labor relations and labor standards at a motel are within the reach of the commerce power. As to the National Labor Relations Act, the case in point is *Hotel Employees Local 255* v. *Leedom*, 358 U. S. 99 (1958), *reversing* 101 App. D. C. 414, 249 F. 2d 506 (1957). As to the Fair Labor Standards Act, which expressly exempts hotels,

75 Stat. 71 (1961), 29 U.S.C. § 213(a)(2)(ii), compare *United States* v. *Darby*, 312 U. S. 100, 118 (1941); *Kirschbaum Co.* v. *Walling*, 316 U. S. 517 (1942).

Wickard v. *Filburn*, 317 U. S. 111 (1942), demonstrates the reach of the commerce power to apparently local and minuscule activity (here under the Agricultural Adjustment Act), which has an impact on interstate commerce only through the aggregate of all such local and minuscule activities. The record in the instant case shows that appellant's activity is primarily and substantially interstate in effect (Stipulation of Facts, Record, p. 17). Therefore, *a fortiori* the practices of the appellant are subject to regulation under the commerce power.

POINT III

The public accommodations provision violates neither the Fifth Amendment nor the Thirteenth Amendment.

A. As to the Fifth Amendment

The contention that § 201(a), making it unlawful for establishments providing lodging to transient guests to discriminate because of race, creed, color or national origin, violates the Fifth Amendment, is wholly without foundation.

Obviously, every regulatory enactment of the states as well as of the Congress involves some loss of freedom. The appellant's Complaint admits that the use of its land is subject to restriction by health and zoning laws (para. 8, Record, p. 8). All the regulations by Congress under the commerce power referred to in Point II involved a correlative loss of freedom, such as, the businessman's freedom to refuse to bargain with representatives of his employees' own choosing. The Civil Rights Act of 1964 only deprives operators of public places catering to transients

of the freedom to deny their accommodations to a segment of the public, a so-called freedom that innkeepers never had under the common law. *Blackstone's Commentaries on the Laws of England* (Harper & Bros., New York 1854, based on 21st London ed.), Vol. III, Ch. IX, p. 165.

The true issue is whether Congress acted arbitrarily and capriciously in finding that racial discrimination by motels affected commerce and whether the provisions of Title II are reasonable and appropriate to eliminate the evil which Congress found to exist. The appellant's parade of horribles which it labels "interstate commerce by infection" provides extreme hypothetical examples of regulation in the absence of any demonstrated evil, the exact opposite of what we have in the present record.

In fact, there is nothing novel or impractical about legislation against racial discrimination by places of public accommodation. Such laws have been in effect in this country for a century. New York's own experience with this legislation dates back over 80 years. President Kennedy in his message to Congress requesting enactment of a civil rights bill referred to some 30 states, the District of Columbia and numerous cities "covering some two-thirds of this country and well over two-thirds of its people" which had already enacted laws against discrimination in places of public accommodation. H. Doc. 124, 88th Cong., 1st Sess. Cf. *Bell* v. *Maryland*, decided by this Court on June 22, 1964, Opinion by Mr. Justice Douglas, Appendix V, prepared by the United States Commission on Civil Rights, tabulating state anti-discrimination laws as of March 18, 1964.

These local laws have worked well. From the experience of New York State, of which this *amicus* has personal knowledge, it is evident that such legislation is reasonable and has resulted in no impairment of private property nor of individual liberties.

It is clear that state and local anti-discrimination laws do not violate the due process clause of the Fourteenth Amendment. *Railway Mail Association* v. *Corsi*, 326 U. S. 88 (1945); also, *Colorado Anti-Discrimination Commission, et al.* v. *Continental Air Lines, Inc.*, 372 U. S. 714 (1963); *District of Columbia* v. *John R. Thompson Co.*, 346 U. S. 100, 109 (1953); *Bob-Lo Excursion Co.* v. *Michigan*, 333 U. S. 28 (1948). The Federal legislation based upon the commerce clause is no more subject to attack under the due process clause of the Fifth Amendment than are such state enactments under the Fourteenth Amendment. As observed in *United States* v. *Rock Royal Co-operative*, 307 U. S. 533, 569-70 (1939):

> "The authority of the Federal Government over interstate commerce does not differ in extent or character from that retained by the states over intrastate commerce."

B. As to the Thirteenth Amendment

The most semantical and spurious of appellant's arguments is the contention that Title II of the Civil Rights Act of 1964 violates the Thirteenth Amendment. Again, as with respect to the argument relating to the Fifth Amendment, it is inevitable that governmental regulation of whatever character may restrict someone's personal freedom to do and associate as he pleases, but it does not follow that every such restriction gives rise to an involuntary servitude.

The kind of coercive personal labor against which the Thirteenth Amendment was directed has no relevance here. Compare *Marcus Brown Co.* v. *Feldman*, 256 U. S. 170 (1921). The admonition of this Court in the *Slaughter-House Cases*, 16 Wall. 36 (1873) at 68-69, 72, that we must be mindful of the historic purpose of the Amendment, which was to forbid conditions such as the slavery of the Negroes that ante-dated the Civil War, is sharp. The

Thirteenth Amendment, adopted as a protection for the former slaves, would, if appellant's argument were to prevail, be used to enslave them.

CONCLUSION

The decision of the Court below that Title II, § 201(a), (b)(1) and (c) of the Civil Rights Act of 1964 is valid and constitutional should be affirmed.

Dated: New York, N. Y., September 25, 1964.

Respectfully submitted,

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York

SAMUEL A. HIRSHOWITZ
First Assistant Attorney General

SHIRLEY ADELSON SIEGEL
Assistant Attorney General
in Charge of Civil Rights Bureau
Of Counsel